IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No.128 of 1992
Date of decision: 19.10.2006

Commissioner of Income-tax, Patiala

..Applicant
through
Mr.S.K.Garg Narwana, Advocate

v.

Smt.Meenakshi Gupta

..**Respondent**
through
Nemo

CORAM:

Hon'ble Mr.Justice K.S.Garewal
Hon'ble Mr.Justice Rajesh Bindal

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Rajesh Bindal, J.

At the instance of the Revenue, the Income-tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal') has referred the following question for the opinion of this Court arising out of ITA No. 935/Chandi/88 pertaining to the assessment year 1985-86, in terms of the directions given by this Court vide order dated 28.11.1991 in I.T.C. No.96 of 1991:

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the property belongs to the assesse when no transfer deed had been executed as required under the Transfer of Property Act and that of Stamp Act?"

During the course of assessment, it was found that the assessee was enjoying rental income in respect of industrial shed No. C-44, Industrial Area, Mohali at the rate of Rs. 5,000/- per month, which had not been transferred yet in the name of the assessee at the relevant time. Accordingly, a notice was issued to the assessee to show cause as to why deduction admissible under Section 24 of the

Income-tax Act, 1961 be not disallowed and the income be not assessed under the head “income from other sources”. In response to the notice, the assessee relying upon a judgment of this Court in Smt. Kala Rani v. Commissioner of Income-Tax, Patiala-I, (1981) 130 I.T.R. 321 prayed for vacation of notice. However, the Assessing Officer disallowed the claim of the assessee for treating the same as income from house property and assessed the same under the head “income from other sources”. In Appeal before the Deputy Commissioner (Appeals), the assessee failed. In further appeal before the Tribunal, the assessee succeeded, while relying upon Smt. Kala Rani's case (supra), the Tribunal accepted the plea of the assessee.

It could not be disputed that the view taken by this Court in Smt.Kala Rani's case (supra) was approved by Hon'ble the Supreme Court in Commissioner of Income-Tax v. Podar Cement Pvt. Ltd. and others, (1997) 226 I.T.R. 625.

As the view taken by the Tribunal was in terms of the judgment of this Court in Smt.Kala Rani's case (supra), which was approved by Hon'ble the Supreme Court in Podar Cement Pvt. Ltd.'s case (supra), for the reasons stated therein, we answer the question against the revenue and in favour of the assessee.

The reference is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

(K. S. Garewal)
Judge

19.10.2006
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